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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; transferring, renumbering, and amending
 4 s. 215.44(8), F.S., which provides exemptions from public
 5 records requirements for the State Board of
 6 Administration; creating s. 215.440, F.S.; specifying
 7 information that does not constitute proprietary
 8 confidential business information held by the State Board
 9 of Administration; requiring the State Board of
 10 Administration to maintain a written list of records
 11 covered under a verified, written declaration; conforming
 12 cross-references; making editorial changes; removing the
 13 scheduled repeal of the exemption; amending s. 215.47,
 14 F.S.; conforming cross-references; providing an effective
 15 date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (8) of section 215.44, Florida
 20 Statutes, is transferred and renumbered as section 215.440,
 21 Florida Statutes, and is amended to read:

22 215.440 Board of Administration; public record
 23 exemptions.-

24 (1)(8)(a) In order to effectively and efficiently
 25 administer the real estate investment program of the State Board
 26 of Administration, the Legislature finds a public necessity in
 27 protecting specified records of the board. Accordingly, records
 28 and information relating to acquiring, hypothecating, or

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29 disposing of real property or related personal property or
 30 mortgage interests in same, as well as interest in collective
 31 real estate investment funds, publicly traded securities, or
 32 private placement investments, are confidential and exempt from
 33 s. 119.07(1) in order to protect proprietary information
 34 requisite to the board's ability to transact arms length
 35 negotiations necessary to successfully compete in the real
 36 estate investment market. All reports and documents relating to
 37 value, offers, counteroffers, or negotiations are confidential
 38 and exempt from s. 119.07(1) until closing is complete and all
 39 funds have been disbursed. Reports and documents relating to
 40 tenants, leases, contracts, rent rolls, and negotiations in
 41 progress are confidential and exempt from the provisions of s.
 42 119.07(1) until the executive director determines that releasing
 43 such information would not be detrimental to the interests of
 44 the board and would not cause a conflict with the fiduciary
 45 responsibilities of the State Board of Administration.

46 (2) ~~(b)~~ In order to effectively and efficiently administer
 47 the investment programs of the board, the Legislature finds a
 48 public necessity in protecting records other than those
 49 described in subsection (1) paragraph (a). Accordingly, records
 50 and other information relating to investments made by the board
 51 pursuant to its constitutional and statutory investment duties
 52 and responsibilities are confidential and exempt from s.
 53 119.07(1) until 30 days after completion of an investment
 54 transaction. However, if in the opinion of the executive
 55 director of the board it would be detrimental to the financial
 56 interests of the board or would cause a conflict with the

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57 | fiduciary responsibilities of the board, information concerning
 58 | service provider fees may be maintained as confidential and
 59 | exempt from s. 119.07(1) until 6 months after negotiations
 60 | relating to such fees have been terminated. This exemption
 61 | prevents the use of confidential internal investment decisions
 62 | of the State Board of Administration for improper personal gain.

63 | (3) (a) (e) 1. As used in this paragraph, the term:

64 | 1. a. "Alternative investment" means an investment by the
 65 | State Board of Administration in a private equity fund, venture
 66 | fund, hedge fund, or distress fund or a direct investment in a
 67 | portfolio company through an investment manager.

68 | 2. b. "Alternative investment vehicle" means the limited
 69 | partnership, limited liability company, or similar legal
 70 | structure or investment manager through which the State Board of
 71 | Administration invests in a portfolio company.

72 | 3. e. "Portfolio company" means a corporation or other
 73 | issuer, any of whose securities are owned by an alternative
 74 | investment vehicle or the State Board of Administration and any
 75 | subsidiary of such corporation or other issuer.

76 | 4. d. "Portfolio positions" means individual investments in
 77 | portfolio companies which are made by the alternative investment
 78 | vehicles, including information or specific investment terms
 79 | associated with any portfolio company investment.

80 | 5. e. "Proprietor" means an alternative investment vehicle,
 81 | a portfolio company in which the alternative investment vehicle
 82 | is invested, or an outside consultant, including the respective
 83 | authorized officers, employees, agents, or successors in
 84 | interest, which controls or owns information provided to the

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85 State Board of Administration.

86 ~~6.f.~~ "Proprietary confidential business information" means
 87 information that has been designated by the proprietor when
 88 provided to the State Board of Administration as information
 89 that is owned or controlled by a proprietor; that is intended to
 90 be and is treated by the proprietor as private, the disclosure
 91 of which would harm the business operations of the proprietor
 92 and has not been intentionally disclosed by the proprietor
 93 unless pursuant to a private agreement that provides that the
 94 information will not be released to the public except as
 95 required by law or legal process, or pursuant to law or an order
 96 of a court or administrative body; and that concerns:

97 ~~a.(I)~~ Trade secrets as defined in s. 688.002.

98 ~~b.(II)~~ Information provided to the State Board of
 99 Administration regarding a prospective investment in a private
 100 equity fund, venture fund, hedge fund, distress fund, or
 101 portfolio company which is proprietary to the provider of the
 102 information.

103 ~~c.(III)~~ Financial statements and auditor reports of an
 104 alternative investment vehicle.

105 ~~d.(IV)~~ Meeting materials of an alternative investment
 106 vehicle relating to financial, operating, or marketing
 107 information of the alternative investment vehicle.

108 ~~e.(V)~~ Information regarding the portfolio positions in
 109 which the alternative investment vehicles invest.

110 ~~f.(VI)~~ Capital call and distribution notices to investors
 111 of an alternative investment vehicle.

112 ~~g.(VII)~~ Alternative investment agreements and related

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113 records.

114 h.~~(VIII)~~ Information concerning investors, other than the

115 State Board of Administration, in an alternative investment

116 vehicle.

117 7.g. "Proprietary confidential business information" does

118 not include:

119 a.~~(I)~~ The name, address, and vintage year of an

120 alternative investment vehicle and the identity of the

121 principals involved in the management of the alternative

122 investment vehicle.

123 b.~~(II)~~ The dollar amount of the commitment made by the

124 State Board of Administration to each alternative investment

125 vehicle since inception.

126 c.~~(III)~~ The dollar amount and date of cash contributions

127 made by the State Board of Administration to each alternative

128 investment vehicle since inception.

129 d.~~(IV)~~ The dollar amount, on a fiscal-year-end basis, of

130 cash distributions received by the State Board of Administration

131 from each alternative investment vehicle.

132 e.~~(V)~~ The dollar amount, on a fiscal-year-end basis, of

133 cash distributions received by the State Board of Administration

134 plus the remaining value of alternative-vehicle assets that are

135 attributable to the State Board of Administration's investment

136 in each alternative investment vehicle.

137 f.~~(VI)~~ The net internal rate of return of each alternative

138 investment vehicle since inception.

139 g.~~(VII)~~ The investment multiple of each alternative

140 investment vehicle since inception.

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141 h.~~(VIII)~~ The dollar amount of the total management fees
 142 and costs paid on an annual fiscal-year-end basis by the State
 143 Board of Administration to each alternative investment vehicle.

144 i.~~(IX)~~ The dollar amount of cash profit received by the
 145 State Board of Administration from each alternative investment
 146 vehicle on a fiscal-year-end basis.

147 j. A description of any compensation, fees, or expenses,
 148 including the amount or value, paid or agreed to be paid by a
 149 proprietor to any person to solicit the board to make an
 150 alternative investment or investment through an alternative
 151 investment vehicle. This does not apply to an executive officer,
 152 general partner, managing member, or other employee of the
 153 proprietor, who is paid by the proprietor to solicit the board
 154 to make such investments.

155 (b)2. Proprietary confidential business information held
 156 by the State Board of Administration regarding alternative
 157 investments is confidential and exempt from s. 119.07(1) and s.
 158 24(a), Art. I of the State Constitution for 10 years after the
 159 termination of the alternative investment. This exemption
 160 applies to proprietary confidential business information held by
 161 the State Board of Administration before, on, or after October
 162 1, 2006.

163 (c)1.3. Notwithstanding the provisions of paragraph (b)
 164 ~~subparagraph 2.~~, a request to inspect or copy a record under s.
 165 119.07(1) that ~~which~~ contains proprietary confidential business
 166 information shall be granted if the proprietor of the
 167 information fails, within a reasonable period of time after the
 168 request is received by the State Board of Administration, to

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169 | verify the following to the State Board of Administration
 170 | through a written declaration in the manner provided by s.
 171 | 92.525:

172 | a. That the requested record contains proprietary
 173 | confidential business information and the specific location of
 174 | such information within the record;

175 | b. If the proprietary confidential business information is
 176 | a trade secret, a verification that it is a trade secret as
 177 | defined in s. 688.002;

178 | c. That the proprietary confidential business information
 179 | is intended to be and is treated by the proprietor as private,
 180 | is the subject of efforts of the proprietor to maintain its
 181 | privacy, and is not readily ascertainable or publicly available
 182 | from any other source; and

183 | d. That the disclosure of the proprietary confidential
 184 | business information to the public would harm the business
 185 | operations of the proprietor.

186 | 2. The State Board of Administration shall maintain a list
 187 | and a description of the records covered by any verified,
 188 | written declaration made under this paragraph.

189 | (d)4. Any person may petition a court of competent
 190 | jurisdiction for an order for the public release of those
 191 | portions of any record made confidential and exempt by paragraph
 192 | (b) subparagraph 2. Any action under this subparagraph must be
 193 | brought in Leon County, Florida, and the petition or other
 194 | initial pleading shall be served on the State Board of
 195 | Administration and, if determinable upon diligent inquiry, on
 196 | the proprietor of the information sought to be released. In any

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197 order for the public release of a record under this
 198 subparagraph, the court shall make a finding that the record or
 199 portion thereof is not a trade secret as defined in s. 688.002,
 200 that a compelling public interest is served by the release of
 201 the record or portions thereof which exceed the public necessity
 202 for maintaining the confidentiality of such record, and that the
 203 release of the record will not cause damage to or adversely
 204 affect the interests of the proprietor of the released
 205 information, other private persons or business entities, the
 206 State Board of Administration, or any trust fund, the assets of
 207 which are invested by the State Board of Administration.

208 ~~5. This paragraph is subject to the Open Government Sunset~~
 209 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 210 ~~on October 2, 2011, unless reviewed and saved from repeal~~
 211 ~~through reenactment by the Legislature.~~

212 Section 2. Subsection (15) of section 215.47, Florida
 213 Statutes, is amended to read:

214 215.47 Investments; authorized securities; loan of
 215 securities.—Subject to the limitations and conditions of the
 216 State Constitution or of the trust agreement relating to a trust
 217 fund, moneys available for investments under ss. 215.44-215.53
 218 may be invested as follows:

219 (15) With no more, in the aggregate, than 10 percent of
 220 any fund in alternative investments, as defined in s.
 221 215.440(3)(a)1. ~~215.44(8)(c)1.a.~~, through participation in the
 222 vehicles defined in s. 215.440(3)(a)2. ~~215.44(8)(c)1.b.~~, or in
 223 securities or investments that are not publicly traded and are
 224 not otherwise authorized by this section.

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Section 3. This act shall take effect October 1, 2011.